

K2LPBOMB

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

6 19 CR 463 (DLC)

7 EMILIANO BOMBA,

8 Defendant.
9 -----x

10 New York, N.Y.
11 February 21, 2020
12 9:41 a.m.

13 Before:

14 HON. PAUL A. ENGELMAYER,

15 District Judge

16 APPEARANCES

17 GEOFFREY S. BERMAN,
18 United States Attorney for the
19 Southern District of New York
20 SEBASTIAN SWETT
21 Assistant United States Attorney

22 TELESFORO DEL VALLE, JR.
23 Attorney for Defendant

24 ALSO PRESENT: ERIKA de los RIOS, Spanish Interpreter

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1 (In open court)

2 (Case called)

3 MR. SWETT: Good morning, your Honor. Shebb Swett for
4 the United States.

5 THE COURT: All right. Good morning, Mr. Swett.

6 MR. DEL VALLE: Good morning, your Honor. Ted
7 Del Valle representing Mr. Emiliano Bomba.

8 THE COURT: Good morning, Mr. Del Valle, and good
9 morning to you, Mr. Bomba. Good morning, as well, to the
10 members of the public who are here.

11 I will note for the record that Mr. Bomba is assisted
12 today by a court certified Spanish translator.

13 Mr. Bomba, if at any point you can't hear or
14 understand what the translator is saying, please raise your
15 hand and get my attention because it's imperative that you
16 understand everything that is said. Will you agree to do that?

17 THE DEFENDANT: Yes.

18 THE COURT: Very good. Please be seated.

19 All right. This case is assigned to my colleague,
20 Judge Cote. She has referred it to me in my capacity as the
21 Part 1, or emergency, Judge, and so I'm here not for all
22 purposes but solely to resolve the issue that I gather divides
23 the parties today. Specifically, my understanding from what my
24 deputy has informed me, is that the defense intends to make an
25 application for a condition for release on conditions of bail.

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In preparation for this proceeding, I have reviewed a very few materials. I've reviewed the indictment in this case. My deputy has requested, and I have received and reviewed, the brief pretrial services report that was generated in the Central District of California at the time of the defendant's original arrest. I have reviewed the February 6th addendum prepared by the pretrial services officer here, and I have, just before taking the bench, reviewed the transcript of the February 6th initial pretrial conference held before Judge Cote, at which she set a December trial date and at which the government set out broadly its areas of rule 16 discovery.

I've asked Mr. Smallman to reach out to the pretrial services department to make sure that they have an opportunity to be present. Thus far, they are not, and I need to go ahead with the hearing now.

Before I turn to you, Mr. Del Valle, let me just take -- before I turn to you, Mr. Del Valle, let me just turn to Mr. Swett. Before arguing the issue of bail, can you just give me a little perspective of the case so I have a fuller understanding of it, and then what I propose to do is turn to Mr. Del Valle so he can set out the proposed bail application, and then, Mr. Swett, I'll give you an opportunity to respond.

MR. SWETT: Sure. So just a little procedural history. The indictment was returned on June 20, 2019, and charges one count of conspiracy to commit money laundering with

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1 five separate objects.

2 The defendant was arrested in the Central District of
3 California on January 13th, 2020. He initially requested a
4 detention hearing and an identity hearing the following day.
5 There was a bail hearing on January 17th, 2020. He was
6 detained at that point on the basis of risk of non-appearance.

7 THE COURT: May I ask you, I take it there's no
8 transcript available of that hearing?

9 MR. SWETT: I do not have a transcript of that
10 hearing, your Honor. My understanding, though, is that the
11 sureties that were proposed for his bail package really had no
12 personal relationship with him, and that was, more or less, the
13 basis of the Court's decision.

14 THE COURT: In other words, was the Court putting in
15 place conceptually the structure of a bail hearing and simply
16 finding that the proposed sureties inadequate, or was the Court
17 doing something other than that?

18 MR. SWETT: What I have, your Honor, I'm sorry, I
19 didn't print a copy for today, I have a form in which the Court
20 made notations. And the only one I remember is sort of that
21 the sureties didn't have a relationship. I don't know if there
22 was -- if the court said anything about whether there could be
23 a package or if there were different sureties.

24 THE COURT: Right, but sometimes what a Court will say
25 is, I will approve release on the condition that a certain

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1 number of sureties execute a bond in a certain amount and post
2 security in a certain amount, and then it devolves to the
3 government, in effect, to certify whether the sureties have
4 moral suasion. That doesn't sound like that happened.

5 MR. SWETT: That did not happen. It was a denial of
6 the application for bail. He was detained for risk of
7 non-appearance.

8 THE COURT: All right. Go on.

9 MR. SWETT: Basically, he was transferred to the
10 Southern District of New York. So the indictment basically
11 relates to --

12 THE COURT: Sorry, may I ask you just one question
13 before we get to that? Any intelligence as to why it took
14 almost seven months for the defendant to be arrested on the
15 indictment?

16 MR. SWETT: The defendant lives in Mexico, your Honor.
17 The arrest warrant was lodged, and he traveled to the United
18 States, I believe for tourism, and was arrested when he came to
19 the United States.

20 THE COURT: I see. Thank you.

21 MR. SWETT: So the indictment generally relates to a
22 large-scale money laundering network involving narcotics
23 proceeds. This was a network that relied on the black market
24 peso exchange, and the Court likely is familiar with this, but
25 I'll just give a very brief summary of what the black market

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1 peso exchange is.

2 So rather than directly moving dirty money, the cash
3 that's picked up for a drug trafficking organization, basically
4 brokers situated in the United States and elsewhere will buy
5 and sell currency on sort of black market, and they will move
6 that currency outside the purview of the banking system and
7 outside the purview of any government.

8 So to give a very simple example. Let's say that
9 there's an individual in Mexico who wants to send pesos to the
10 United States to avoid paying taxes, or whatever reason. They
11 will contact a black market peso exchange broker. That broker
12 will then buy the pesos at a discount and have to pay that
13 individual in dollars in the United States.

14 At the same time, that broker is buying dollars and
15 the black market peso exchange is fueled by the narcotics
16 industry. So they will usually buy drug proceeds in the United
17 States at a discount, and they will need to pay the drug
18 trafficking organization in pesos in Mexico. And so
19 essentially, by buying pesos in Mexico and buying dollars in
20 the United States, they can satisfy both of their clients, and
21 they take a commission on those transactions.

22 THE COURT: And I take it that avoids the need for
23 physical, cold, hard cash to cross the border?

24 MR. SWETT: Correct, your Honor. So the indictment
25 alleges that -- or we allege that Mr. Bomba operated two

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1 companies that were part of this black market peso exchange.
2 These companies were located in the United States. They
3 received dollars from drug trafficking organizations, and then
4 transferred those pesos to the drug trafficking organizations
5 in Mexico. The dollars were transferred to wealthy Mexicans
6 who had bank accounts here in the United States.

7 This was a long investigation, encompassing multiple
8 years. The time period in which we were tracking the company's
9 tie to Mr. Bomba was between approximately 2018, January 2018,
10 and January 2019. The overall amount of dollars received into
11 those accounts for that 18-month period was approximately \$20
12 million.

13 There's -- I was speaking with the agent last night,
14 who was traveling, so there's an additional account that he
15 couldn't access. It's probably, at most, a couple of million
16 dollars extra; so we're talking about \$20 million. But that's
17 a piece of a much larger case.

18 And I'll just tell the Court sort of what are some
19 statistics related to this case. So the government has seized
20 approximately \$135 million in cash and assets, 14 firearms --

21 THE COURT: Sorry, slow down. 135 million in cash and
22 assets. Go ahead.

23 MR. SWETT: 14 firearms.

24 THE COURT: Right.

25 MR. SWETT: 201 kilograms of heroin, 253 kilograms of

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fentanyl, 245 kilograms of cocaine, and 101 kilograms of methamphetamine. And to put that in context, this case is a money laundering investigation. It's actually not a narcotics investigation, strictly speaking, but by passing leads generated through this case to other agents around the country, these are some of the statistics that have resulted. The cash seizures relate directly to this case.

THE COURT: Tell me about Mr. Bomba's conduct specifically.

MR. SWETT: So Mr. Bomba's conduct specifically, as I said, relates to these bank accounts. The fact is that they were opened for the purpose of transmitting dollars to -- dirty dollars to Mexico in pesos and pesos to the United States. The evidence against him is the movement of the funds in and out of the account.

We've sort of looked into these two companies. They have no footprint. They have no ostensible business purpose and, yet, they move millions of dollars. They move millions of dollars, much of which we can directly tie to drug trafficking.

In fact, this was a case involving what is known as an Attorney General Exempt Operation, or an AGEO. That's an operation in which the DEA has limited authority to move dirty proceeds, basically to track it in order to develop evidence in money laundering cases.

So here, some of the money that was going into his

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1 accounts was money that undercovers or cooperating sources
2 picked up from drug traffickers, then put into DEA undercover
3 accounts, and then wired directly to Mr. Bomba's accounts.

4 Now, Mr. Bomba did not open these accounts himself,
5 and we would say that that's indicative of an intent to conceal
6 and his sort of consciousness of guilt, but more specifically,
7 there are cooperating sources in this case. There is a
8 recorded call in which they discuss the fact that these are
9 narcotics proceeds. There are encrypted messages that have
10 been recovered in the course of this investigation.

11 THE COURT: Sorry, just to be clear, in these
12 communications with Mr. Bomba?

13 MR. SWETT: Yes. The recorded call is with Mr. Bomba.
14 The encrypted conversations that were consensually obtained are
15 also with Mr. Bomba, and then we have an e-mail account that we
16 believe was used by Mr. Bomba to -- there's no sort of
17 substance in the messages, but basically they send wire
18 confirmations to and from each other.

19 And it's actually, you know, you can sort of see,
20 really, the life cycle of one of these transactions by looking
21 at the messages and the accounts, where someone will
22 communicate over an encrypted app. They will request a
23 transfer of a certain amount. The person that they communicate
24 with will then communicate with the next person, who says this
25 is what I have, this is the commission, and so on and so forth.

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1 So we believe that the strength of the evidence is
2 quite strong here. And, obviously --

3 THE COURT: But you're saying there are recorded
4 conversations that -- in which Mr. Bomba participates in which
5 it is either express or thinly veiled code language that makes
6 clear that the proceeds here relate to narcotics?

7 MR. SWETT: Yes. I'm paraphrasing, but essentially
8 the counterparty in the conversation says: I need to use your
9 account; it's for the narcos again, or something like that, and
10 Bomba acknowledges it.

11 So we feel we have a very strong case, and just sort
12 of to put a bow on the overall case and how it relates to risk
13 of flight. Taking sort of the narrowest view of what his
14 guidelines exposure is, and that would be roughly \$20 million
15 in laundered funds, I came out with a guidelines level of 31,
16 and that's with reference to section 2B1.1, and with certain
17 enhancements because of the money laundering offense. And so
18 guideline level 31, and that's including acceptance points,
19 with a criminal history category of I, results in a sentence of
20 108 to 135 months. So this is a serious crime with serious
21 consequences, which again --

22 THE COURT: Refresh my memory, is the money laundering
23 guideline, does it revert to 2B1.1.

24 MR. SWETT: So the way it works out is there are sort
25 of two -- there are two different prongs. If the underlying --

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1 if the defendant committed the underlying offense, the
2 specified unlawful act, or if the underlying offense can be
3 determined, then you use the offense level for the underlying
4 offense.

5 So here, that would likely be life, if we're talking
6 about the drug seizures that are sort of tied to this case.
7 But then, in the alternative, the way it works is it's base
8 offense level eight, plus the amount of funds moved as set
9 forth in the schedule for 2B1.1, which is the fraud section.
10 So here, the range would be 9.5 million to 25 million. And
11 then --

12 THE COURT: Why? I thought you said -- right, 20
13 million, very good.

14 MR. SWETT: Right. And that's, again, just limiting
15 it to his accounts. That's not taking the broad view of what
16 the total is for the conspiracy. And then there is a
17 four-level enhancement if the individual was in the business of
18 money laundering, and we think we can show that. And then we
19 would also seek a two-level enhancement for sophisticated
20 means, which is certainly the case in this case.

21 THE COURT: I think what you're saying is the
22 guideline approach you've taken is, in a sense, a conservative
23 one because it's anchored not in the narcotic guidelines, but
24 in the non-narcotics, money laundering guideline, correct?

25 MR. SWETT: Correct, and even there, limiting it to

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1 funds that went through his companies.

2 THE COURT: Okay. Final question, then I'll turn the
3 floor to Mr. Del Valle, and we'll focus specifically on bail.

4 Does the evidence you've obtained in the case reveal
5 anything about the ultimate destination of the money, or the
6 access that Mr. Bomba has to the money that presumably the
7 business you are describing made from this and/or any other
8 work?

9 MR. SWETT: So the answer is that we can't sort of
10 know for certain. I will say, you know, our impression -- so
11 the 20 million that moved through his account, it's not as if
12 he made 20 million.

13 THE COURT: Right.

14 MR. SWETT: The amount that he personally made is a
15 bit of a guesswork.

16 THE COURT: But you said there's, for example, a
17 discount to reflect presumably risk in the nature of the
18 business. Are you able to figure out the haircut between the
19 American dollars that go in and the pesos that come out?

20 MR. SWETT: So it's usually about 4 to 7 percent,
21 and -- but I would note that, you know, we've only
22 identified -- we've identified three bank accounts. There may
23 be other bank accounts that he's using, and we know, for
24 instance, that money that he sort of -- well, we know that
25 there are accounts located in Hong Kong, accounts located in

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1 other jurisdictions, where we don't have as much clarity. The
2 U.S. bank accounts are easy for us to look into. Other
3 accounts located in other jurisdictions are harder for us to --

4 THE COURT: Do you know whether this business engaged
5 in drug money laundering other than between U.S. and Mexico?

6 MR. SWETT: Yes. We know that they sent money to Hong
7 Kong. It's not clear if that money was for drug trafficking
8 organizations located in Hong Kong, or the purpose was to add
9 another layer of concealment before it went back to Mexico.

10 THE COURT: Okay. But in terms of thinking about the
11 revenue, if that's the right way to put it, for the business,
12 your investigation spanned a 12-month period. There is about a
13 4 to 7 percent hold or haircut on about \$20 million, 7 percent
14 of \$20 million would be 1.4 million, 4 percent would be
15 \$800,000. That's a ballpark revenue estimate based on the
16 revenues that you've been able to trace, without prejudice
17 to -- or rather, with respect to the money in and out that
18 you've been able to trace. That's without prejudice to the
19 argument that there may be other accounts in the U.S. or other
20 arms of the business that aren't implicated in the 20 million
21 that you've traced.

22 MR. SWETT: Correct, your Honor.

23 THE COURT: All right. Thank you, Mr. Swett.
24 Extremely helpful.

25 All right. Mr. Del Valle, the floor is yours.

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1 MR. DEL VALLE: Thank you, your Honor. Good morning.

2 THE COURT: Good morning.

3 MR. DEL VALLE: First, I'd like to, with the Court's
4 permission, acknowledge the members of Mr. Bomba's family who
5 are here present on his behalf. I have Mr. Bomba's mother, who
6 is present. I have Mr. Bomba's father, who is also present,
7 Mr. Bomba's sister-in-law.

8 THE COURT: I'm sorry, his mother's sister-in-law or
9 Mr. Bomba's sister-in-law?

10 MR. DEL VALLE: Mr. Bomba's sister-in-law, and
11 Mr. Bomba's brother-in-law, who are also present, and a rabbi,
12 who is also here in support of Mr. Bomba.

13 THE COURT: All right. Let me just pause and welcome
14 all of you and thank you all for being here today. Go ahead.

15 MR. DEL VALLE: So, your Honor, Mr. Bomba indeed does
16 live in Mexico. Mr. Bomba was born in Argentina, and he lives
17 in Mexico and was raised in Mexico. And Mr. Bomba is very
18 active in the Jewish community in Mexico and, actually,
19 worldwide.

20 Mr. Bomba, your Honor, was indeed arrested on
21 January 13th of this year, when he was in California, where he
22 has often gone back and forth, and where he has relations with
23 other members of the Jewish community there. As a matter of
24 fact, very soon I will lay out that one of the proposed
25 suretors is a member of the Jewish community there and is also

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1 a rabbi in San Diego.

2 Now, our position, your Honor, is that we're aware
3 that these are very serious charges. We also are aware of the
4 fact that there are multiple, multiple players in this
5 conspiracy. Mr. Bomba wasn't fleeing or hiding or didn't even
6 know. Obviously, this all came as a surprise to him. In fact,
7 the family was very clear with me that had they known, they
8 would have had Mr. Bomba present himself to the United States
9 authorities immediately. I say this because also when
10 Mr. Bomba was first arrested --

11 THE COURT: You're saying that if Mr. Bomba had known
12 that there was a sealed charge against him in the United
13 States, the family would have told him to go to the United
14 States --

15 MR. DEL VALLE: Absolutely.

16 THE COURT: -- to be arrested?

17 MR. DEL VALLE: Yes, your Honor, absolutely. And the
18 reason I say that, your Honor, is the way I was contacted was
19 by Mr. Bomba's brother-in-law, who is an attorney and also Dean
20 of a law school in Mexico. His wife was also a lawyer, very
21 renowned in that community and, actually, are in charge of
22 giving courses to the Mexican judges. It's a very respectful
23 family, highly respected in the area, and in the legal field.

24 Our proposal, your Honor, is noting, of course and we
25 know the Court is well aware, this is not a case where it's

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1 subject to mandatory sentencing, but our proposal, your Honor,
2 is a \$750,000 personal recognizance bond, and we would proffer
3 to have this bond secured by four financially responsible
4 people, and the fifth by moral suasion; that being his mother,
5 and I'll explain.

6 Mr. Bomba's mother has come to the United States, has
7 rented an apartment in Brooklyn, has -- I provided the
8 government with a lease of that apartment. She has pledged to
9 stay here for the length of the case, for as long as it takes,
10 living with her son in that apartment. Those arrangements were
11 made, your Honor, because, quite frankly, he doesn't live here.
12 If your Honor does give him bail, where is he going to stay?
13 And they did that, and it's a great sacrifice.

14 Mr. Bomba's father cannot stay, but he did fly up for
15 this. But Mr. Bomba's mother does wish to stay with him, and
16 so though she doesn't earn an income in the United States, we
17 would propose that she sign as, if you will, a third-party
18 custodian and on the basis of moral suasion with respect to the
19 bond.

20 THE COURT: Sorry, just explain to me. So she would
21 be the fifth cosigner?

22 MR. DEL VALLE: She would be the fifth cosigner.

23 THE COURT: And you're saying while she doesn't earn
24 an income, implicitly, she must have assets so that a loss of
25 \$750,000 would cost her something?

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1 MR. DEL VALLE: Yes, and she does have assets.
2 Unfortunately, they're all in Mexico, but she does have assets.
3 And the family, in a way, was vetted in order to get this
4 apartment, and it's not easy getting an apartment in Brooklyn
5 these days, and she managed to do that.

6 One of the suretors, your Honor, that we propose --
7 and by the way, just for the record, the mother's name is
8 Emiliana Chayo, C-h-a-y-o, Maria Emiliana Chayo.

9 THE COURT: Thank you.

10 MR. DEL VALLE: One of the financially responsible
11 people which we would submit, your Honor, is Rabbi Polichenco,
12 P-o-l-i-c-h-e-n-c-o. This is the gentleman that lives in
13 San Diego, California. Mr. Polichenco has also offered to put
14 his home, his personal home, as security. We have provided the
15 government with a survey of the value of the home, as well as a
16 copy of documentation to show what the equity of this home is.
17 The home has a market value of 1,000 -- I'm sorry, one million
18 and change, and the home owes, on loans, 400,000; so it
19 actually has a value of \$600,000 in equity right now.

20 THE COURT: And you're saying that the Rabbi
21 Polichenco would put up, in effect, his equity in the home?

22 MR. DEL VALLE: That is correct. He's willing to put
23 up the deed, with confession of judgment, with respect to the
24 equity of that home payable, of course, to the United States
25 government and --

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1 THE COURT: Do we know whether the mortgage company or
2 whoever holds the other interest is going to consent to this
3 arrangement?

4 MR. DEL VALLE: Yes. Yes, your Honor. I did check
5 with them, and I have that information as well. I checked with
6 First Republic Bank, and when I spoke to their legal
7 department, they said they would not have a problem with that.
8 In addition, your Honor --

9 THE COURT: They presumably get the first money off
10 the top if the government, in effect, seizes the home; the
11 mortgage company gets the first \$400,000, and the government
12 then gets the rest?

13 MR. DEL VALLE: That's correct, your Honor.

14 THE COURT: If any. I mean, obviously, it depends on
15 what a fire sale of a home like that yields, but I take the
16 point that even some -- the relevant point is that while the
17 government would not necessarily be getting the full 750,000
18 that way, Rabbi Polichenco would be losing his home and,
19 therefore, there's a significant consequence to him.

20 MR. DEL VALLE: It is. It's very significant when
21 anybody to place where his children and his wife and he live,
22 and his wife, your Honor, would be the second cosigner.

23 THE COURT: What is her name?

24 MR. DEL VALLE: Her name is -- I have to spell it.
25 I'm sorry, your Honor. N-e-c-h-a-m-a, middle name,

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1 Dina, D-i-n-a.

2 THE COURT: Right.

3 MR. DEL VALLE: Polichenco. And the reason why she
4 would be the second one is because her name is on the deed as
5 well. It's husband and wife.

6 THE COURT: And do the Polichencos have other means to
7 satisfy the \$750,000 personal recognizance bond, other than
8 their 600 equity in the house?

9 MR. DEL VALLE: They do, your Honor. They have quite
10 substantial means, and I believe, in my estimate, that their
11 combined income is over \$400,000 a year.

12 THE COURT: Okay. Go ahead.

13 MR. DEL VALLE: Thank you. The next proposed suretor,
14 your Honor, is Mr. Ezra Erani, E-z-r-a, last name, Erani,
15 E-r-a-n-i. Mr. Ezra Erani, your Honor, is -- oh, by the way,
16 all these proposed suretors, for the record, are United States
17 citizens.

18 THE COURT: Sorry, the mother is --

19 MR. DEL VALLE: Oh, I'm sorry, except the one for
20 moral suasion, which is the mother.

21 THE COURT: The mother is not a U.S. citizen?

22 MR. DEL VALLE: That's right.

23 THE COURT: But the Rabbi Polichenco and his wife are
24 and so is Mr. Erani?

25 MR. DEL VALLE: That is correct, your Honor. Thank

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1 you. Thanks for that correction.

2 So Mr. Erani, your Honor, is willing to sign. He also
3 lives here in New York City, and he's willing to put up a bank
4 account, which he's had for many, many years, with \$150,000 in
5 cash.

6 THE COURT: Meaning, he would freeze that account, in
7 effect, and not allow anything to be taken out?

8 MR. DEL VALLE: That is correct, your Honor.

9 THE COURT: How does he know the defendant?

10 MR. DEL VALLE: He knows the defendant's family, your
11 Honor. He doesn't know the defendant, and I should go back to
12 Rabbi Polichenco, who does know the defendant for over 20
13 years, but Mr. Erani does not know the defendant. He knows the
14 family. He knows the defendant's family.

15 I would like to point out at this time that this is a
16 very closely knit Jewish community and they, the rabbis, all
17 participate in various activities where the families
18 participate together, and there is a large community that
19 interacts with the Mexican Jewish community in Brooklyn, and
20 through those means, they know each other.

21 THE COURT: Who in the defendant's family does
22 Mr. Erani know?

23 MR. DEL VALLE: Mr. Erani knows the sister-in-law and
24 the brother-in-law --

25 THE COURT: Okay.

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1 MR. DEL VALLE: -- of Mr. Bomba.

2 THE COURT: And there's a fourth suretor.

3 MR. DEL VALLE: Yes, there is. The fourth suretor,
4 your Honor, is Mr. Abraham Lichtenstein,
5 L-i-c-h-t-e-n-s-t-e-i-n. Mr. Lichtenstein, your Honor, also
6 lives here in New York City. He has a house in Brooklyn -- I
7 should say an apartment. I'm sorry, an apartment in Brooklyn,
8 and Mr. Lichtenstein has indicated to me that he has a bank
9 account that he's had for a very long period of time with
10 \$75,000, which he's willing to freeze, or if that's the word,
11 or put up as security.

12 THE COURT: How does he know the defendant, Mr. Bomba?

13 MR. DEL VALLE: Through the sister-in-law and
14 brother-in-law also.

15 THE COURT: Has he met Mr. Bomba, or is he really
16 being vouched through the sister-in-law or brother-in-law?

17 MR. DEL VALLE: He's being vouched, your Honor.

18 THE COURT: He doesn't know the defendant?

19 MR. DEL VALLE: He does not know the defendant, no.

20 THE COURT: May I ask you just briefly, with respect
21 to the last two people who have never met the defendant --

22 MR. DEL VALLE: Yes, sir.

23 THE COURT: -- are they here today, these suretors?

24 MR. DEL VALLE: No, your Honor, but they are --

25 THE COURT: So they've literally never met the

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1 defendant?

2 MR. DEL VALLE: They've never met.

3 THE COURT: Look, here's the question. The inquiry as
4 to a suretor includes not just the risk of loss but the moral
5 suasion, and the inquiry is really would the defendant, if
6 thinking of fleeing, be held back by the consequences that
7 would be visited on the suretor. Why is the answer to that
8 question yes as to the two people he's never met?

9 MR. DEL VALLE: Because they know the family. They
10 know the defendant's moral character through the family. They
11 also, your Honor, have indicated that they are part of a
12 religious organization of which the defendant is a member of,
13 and they have told me -- I've spoken to these people
14 personally -- that they consider the defendant a son and a
15 brother.

16 THE COURT: But they've never met him.

17 MR. DEL VALLE: But they've never met him, no, your
18 Honor.

19 THE COURT: What does it mean to consider somebody --
20 don't take this the wrong way.

21 MR. DEL VALLE: I understand.

22 THE COURT: But that's an idiom. It's a metaphor, but
23 what does it mean if you've never met the person?

24 MR. DEL VALLE: I understand that, your Honor, and I
25 also questioned myself as to their willingness to do this, and

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1 it impressed me that someone would take an account of their
2 savings --

3 THE COURT: There's no question that it speaks a lot
4 about the suretors.

5 MR. DEL VALLE: Right.

6 THE COURT: The relevant question for me is what it
7 says about the defendant.

8 MR. DEL VALLE: Well, one of them told -- I asked, and
9 they told -- why are you doing this? He says: Well, look, I
10 know the family. I know this man would not defraud the family.
11 His family name, and I know this man would come to court each
12 and every time that he was required to do so.

13 THE COURT: Do the suretors know the nature of the
14 charges?

15 MR. DEL VALLE: Yes. I did -- as a matter of fact,
16 your Honor, I took a further step and I sent them each a copy
17 of the entire indictment.

18 THE COURT: Okay.

19 MR. DEL VALLE: And I have spoken to two attorneys of
20 these two suretors.

21 THE COURT: All right. Mr. Del Valle, and I take it,
22 apart from the suretors and the -- we've got four suretors, who
23 are each signing the bond and then putting up, in the case of
24 the first two, a jointly held home --

25 MR. DEL VALLE: Right.

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1 THE COURT: -- on the West Coast and then for the
2 other two bank accounts in New York City. The other terms of
3 the bail package --

4 MR. DEL VALLE: I do have other terms.

5 THE COURT: Yes, I just want to make sure we get to
6 Mr. Swett. Just briefly rattle them off. I've looked at the
7 pretrial report, and I'm assuming that a number of these are
8 familiar ones --

9 MR. DEL VALLE: Yes.

10 THE COURT: -- involving things like travel documents.

11 MR. DEL VALLE: Yes.

12 THE COURT: But so that I have a full set of your
13 package, let me know.

14 MR. DEL VALLE: Yes, your Honor. So we would propose
15 an electronic monitoring device with a GPS tracker be
16 installed, and that the defendant be subject to home detention
17 at that Brooklyn residence with his mother. Obviously, travel
18 restricted within the Southern District and Eastern Districts
19 of New York. Also, the surrender of all his travel documents,
20 and supervision by U.S. pretrial services.

21 THE COURT: Is this a presumption case?

22 MR. DEL VALLE: It is not.

23 THE COURT: So the burden as to risk of flight and
24 danger to the community resides with the government.

25 MR. DEL VALLE: That is correct, your Honor.

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1 THE COURT: What is the status of the defendant's
2 company?

3 MR. DEL VALLE: May I?

4 THE COURT: Yes.

5 (Counsel and defendant conferred)

6 MR. DEL VALLE: The companies are closed, your Honor.

7 THE COURT: Okay. Anything else, Mr. Del Valle?

8 MR. DEL VALLE: Not at this time. Thank you, your
9 Honor.

10 THE COURT: Mr. Swett, I'm happy to hear from you.

11 MR. SWETT: Sure. I'll just be brief, your Honor. So
12 first, we're not seeking detention based on danger to the
13 community.

14 THE COURT: That's because your view is that the
15 company is closed or what?

16 MR. SWETT: Yes, and I mean, this isn't a violence
17 case.

18 THE COURT: Right.

19 MR. SWETT: He hasn't committed violence, and we don't
20 think we can meet the standard of clear and convincing
21 evidence.

22 THE COURT: I appreciate the candor.

23 MR. SWETT: But we do think we meet the standard for
24 risk of flight. The defendant has no ties to the United
25 States, let alone the Southern District of New York. I think

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1 it's telling that his cosigners, most of them have never met
2 him personally.

3 THE COURT: Is that right? I think two of them -- the
4 mother, obviously, has. The Rabbi -- let me ask Mr. Del Valle.

5 As to the rabbi and his wife?

6 MR. DEL VALLE: They saw him grow up, your Honor.
7 They know him for over 20 years.

8 THE COURT: Okay. So two of the four, non-mother
9 cosigners, have met him?

10 MR. SWETT: Sure. In a situation where the U.S.
11 Attorney's Office was interviewing cosigners to determine if we
12 approved, that would be a huge red flag. You know, all the
13 more so for a case in which the defendant has zero ties to the
14 community. Look, it's -- I guess it's admirable that the
15 community would pull together like this, but there's something
16 very troubling about cosigners who, on someone else's say-so,
17 are willing to vouch, and as the Court pointed out, what it
18 says about the defendant's own sort of sense of responsibility
19 to stay here as which he might owe to them.

20 I also think that, you know, the lack of ties and the
21 possible outcome in this case, if he were to be convicted,
22 strongly argue in favor of detention. He's not a U.S. citizen.
23 He's not attempting to stay in the United States. He's not --
24 he has no family here.

25 THE COURT: Do you know if he has children?

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1 MR. SWETT: I don't know if he has children, but I'm
2 almost certain he has no children here in the United States.
3 And so if he were convicted, at the end of his prison sentence,
4 he would immediately be put on a plane, and he would be sent
5 back to Mexico.

6 THE COURT: Is there a detainer on him? Is there any
7 immigration presence here in the background?

8 MR. SWETT: Not that I'm aware of. He traveled here
9 on a tourist visa.

10 THE COURT: A legitimate reason for him to be here; so
11 there would be no reason for immigration to get involved.

12 MR. SWETT: Correct. But the reality is that he can
13 short circuit that process by fleeing to Mexico, and I think
14 the last point I just want to make on that is he has the means,
15 and these are means both to acquire false travel documents, the
16 means to establish, you know, some sort of mode of
17 transportation that would not trigger law enforcement checks.

18 Frankly, your Honor, you know, his business, as we
19 allege, was to move money without governments or banks knowing
20 about it. And so the reality is that this package, which is,
21 you know, a million and change, when you sort of put it all
22 together, he would have the means to make those people whole,
23 as well. And, frankly, we don't know much about these people,
24 and they don't know much about him; so I think that's another
25 question that is raised by this package.

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I think, you know, electronic monitoring bracelets can be cut, travel documents can be acquired. I think there's a strong incentive here. I think, again, it's admirable that his mother has relocated here, but if he's gone, she's got no reason to stay here. And, frankly, the fact that she was able to relocate again speaks to the fact that this is a family that has means and they have access.

THE COURT: You and I had an exchange where I was reasoning through the possible take from the \$20 million or so in a given year. Apart from those inferences, and recognizing the challenges of any international financial investigation, do you have any insight into, in fact, the assets or wherewithal anywhere held by the defendant or his family?

MR. SWETT: Not in Mexico, your Honor. I will say that we believe some of his clients on the Mexican side, that is people who are sending pesos to the United States and converting them into dollars, are billionaires in Mexico. We believe that he is assisting in the movement of funds for companies and individuals in Mexico that own multibillion dollar companies.

THE COURT: What's the basis for that representation?

MR. SWETT: Because we have seized accounts to which he has sent money here in the United States, and we know the ownership of those accounts, and those accounts are owned by individuals who we've identified through open source.

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1 THE COURT: Is it your proposition, Mr. Swett, that
2 essentially there's no bail package that could be put together
3 that would reasonably assure the defendant's presence, or is
4 your application limited to the package that's been offered by
5 Mr. Del Valle?

6 MR. SWETT: Well, both, but the former. I think when
7 you have someone who has such a strong incentive to flee, such
8 little reason to remain and serious means -- I don't want to
9 say unlimited means; I mean, I don't think that's the evidence,
10 but I think he has assets, his family has assets, and I think
11 he is plugged into a community that has assets. And, frankly,
12 that raises concerns that no matter what the package was, he
13 has that incentive and he has the ability.

14 THE COURT: If you know -- this is not the first time
15 that the government has indicted a Mexican national with
16 respect to drugs or drug money laundering activity -- to what
17 degree had defendants in cases that have some echo of this been
18 released on conditions and to what degree have they worked?

19 MR. SWETT: Your Honor, I did not have time to
20 research that question. I will say, you know, just on the
21 question of what might happen if he did flee to Mexico, we have
22 an extradition treaty with Mexico, and we would certainly seek
23 his extradition. But that treaty -- the implementation of that
24 treaty has been very difficult recently for reasons relating to
25 corruption, for reasons related to relationships between the

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1 United States and Mexico.

2 And anecdotally, it is my understanding that
3 extraditing individuals from Mexico is a long and not always a
4 feasible process at this point. Which is, again, a concern of
5 ours, that, look, if he flees, we put a red notice on him, and
6 in some ways he's boxed in and he doesn't have the freedom to
7 live his life. But in other ways, we have concerns that
8 getting to Mexico is a very good step for him in terms of
9 avoiding prosecution for the rest of his life.

10 THE COURT: And is there anecdotal evidence of
11 defendants on release who have fled to Mexico, regardless of
12 the similarity or not of the charges?

13 MR. SWETT: Oh, yes. Absolutely, your Honor. Look, I
14 don't have statistics, but the narcotics unit often has this
15 issue, and they sort of keep track. And I'm happy to put in a
16 submission sort of detailing some recent examples, and I can
17 research whether there have been examples of individuals who
18 are not U.S. citizens, who were released, and let the Court
19 know what happened no those situations.

20 THE COURT: Okay. Anything further?

21 MR. SWETT: No, your Honor.

22 THE COURT: Mr. Del Valle, anything further from you?

23 MR. DEL VALLE: Your Honor, I don't know if the Court
24 would want, but there is a rabbi here who could explain better
25 this --

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1 THE COURT: Sorry, the rabbi who is here is not one of
2 the people who would be signing the bond?

3 MR. DEL VALLE: No, your Honor.

4 THE COURT: I don't think -- with respect, while I'm
5 grateful for his presence and what it says about evidently the
6 defendant's connection to the Jewish community, if he's not a
7 cosigner, it's not of relevance to me.

8 MR. DEL VALLE: I do have the cosigner, which is the
9 sister-in-law, who is an attorney, and can maybe clarify to the
10 Court this relationship that --

11 THE COURT: I think I'm going to pass on hearing from
12 them. Is there anything further from you?

13 MR. DEL VALLE: No.

14 THE COURT: All right. Let me take a moment.

15 MR. DEL VALLE: Thank you, your Honor.

16 (Pause)

17 THE COURT: All right. I'm prepared to rule. Under
18 Title 18, United States Code, Section 3142, the Court is to
19 make a determination whether there are conditions that can
20 reasonably guarantee the defendant's appearance for the balance
21 of this case.

22 Section 3142 also, of course, contains a separate
23 danger to the community prong. The government has, candidly,
24 foregone making any arguments based on that prong; so my
25 remarks solely will be based on the risk of flight component of

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1 Section 3142, and there, as all agree, the burden is on the
2 government by a preponderance of the evidence to show that
3 there are not conditions that can reasonably assure the
4 defendant's continued appearance in the case before Judge Cote.

5 I have benefited today by not just the materials I've
6 read, which I recounted earlier, but the very thoughtful
7 presentations by both sides as to the issue presented.

8 Here, to begin with, the government has presented an
9 overwhelming set of arguments as to the incentives that the
10 defendant would have to flee and the reasons why he is a risk
11 of flight. I will get, in a moment, to the package that has
12 been proposed by the defendant, but just putting that aside,
13 the government has a formidable set of arguments as to why the
14 defendant, on his own terms, presents a risk of flight, but
15 briefly, they are as follows:

16 The defendant has been charged with a gravely serious
17 offense. Money laundering is quite a serious felony under the
18 United States Code. It is all the more so when the offense,
19 whose proceeds are alleged to have been laundered, involves
20 narcotics, including the dangerous narcotics that were
21 described by Mr. Swett.

22 No. 2, the sentencing consequences of conviction for
23 this sort of an offense are substantial. The sentencing
24 guidelines are, of course, no longer binding. They're just
25 advisory, but they, nevertheless, provide, in the early stage

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1 of the case, some form of directional gauge as to the ballpark
2 in which a hypothetical sentence might be imposed, assuming the
3 defendant's conviction of the full scope of the charge as
4 previewed by the government.

5 And here, as proffered by Mr. Swett, the guidelines,
6 given the dollar volume of narcotics proceeds that it is
7 alleged the defendant processed, would, indeed, yield a
8 guideline range that, as proffered by the government, would
9 span the ten-year-in-prison mark, perhaps a little lower,
10 perhaps a little higher, but that is directionally not far off
11 from the ballpark of what a sentence for such an offense in
12 many cases would be.

13 Of course, when imposing sentence there would be a
14 much broader view of all relevant considerations, including the
15 defendant's background and circumstances, and there might be a
16 range of mitigating circumstances. But the government's
17 proffer of what a guideline range, even including acceptance of
18 responsibility, might look like as spanning around the ten-year
19 in prison mark is correct, based on my considerable experience
20 handling cases of this nature.

21 Third, the government has proffered what I think can
22 neutrally be described as, assuming that the proffer accurate,
23 very potent evidence of guilt. In particular, as proffered by
24 the government, there are tape recordings, as well as written
25 communications, texts and the like, and the tape recordings

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1 include an explicit reference to "narco" or the drug trade
2 under circumstances that, as proffered, are indicative of the
3 defendant's knowledge that the nature of the money being
4 transferred is that it is the fruits of an unlawful activity.

5 Significantly, the government has also proffered the
6 absence of evidence of some gainful reason for the defendant's
7 business. It may be that, Mr. Del Valle, as the case moves
8 forward and you have dug into the rule 16 discovery, those
9 representations you may be able to challenge. Maybe as you get
10 your arms around the case, there are ways of looking at
11 evidence, which Judge Cote would want to hear about, at least
12 on the government's proffer.

13 I've been at this business for a long time on the
14 bench and in practice, including as an AUSA beforehand. I have
15 some sense of what strong evidence can look like. A tape
16 recorded conversation or conversations with the defendant in
17 which overt references to the drug trade are used in connection
18 with the transfer of money is tough to get around. And so
19 that, too, would add to the defendant's incentive to flee.

20 At trial, the defendant is a businessman and making a
21 rational business assessment of the likely outcome at trial in
22 the face of evidence proffered like that, he could reasonably
23 conclude that the government is holding a strong hand.

24 The defendant, in addition, there's reason to believe
25 he has very substantial assets. Now, I appreciate that the

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1 government has not been in a position to trace what, in fact,
2 he has, but the colloquy I had with AUSA Swett certainly
3 suggests the likelihood of significant revenues from this line
4 of business, given the \$20 million that apparently went through
5 the line of business that has been traced during a single
6 calendar year, 2018, alone.

7 On the premises that AUSA Swett offered to me, there
8 would be reason to infer that the business obtained revenue on
9 the line of business that the government is familiar with,
10 anyway, of between 800,000 and \$1.4 million during the one year
11 in question, and it may well be that there are other lines of
12 business that simply haven't been traced. The point here is,
13 though, that there are very substantial assets, and those
14 assets create opportunity and means of potentially facilitating
15 a return to Mexico.

16 Another dimension of the basis for finding that the
17 defendant -- that the government has easily met its initial
18 burden here with respect to evidence of a risk of flight are
19 the defendant's negligible ties to the United States. In
20 practice, the only thing that would be keeping him in the
21 United States here would be the trial.

22 He was, apparently, here on either business or
23 vacation, but there's nothing that keeps him here. And were I
24 to release him on conditions, the only thing that would be
25 keeping him here would be the upcoming trial. There's no other

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1 incentive to stay. There's nothing, in effect, offsetting an
2 incentive to flee. There isn't a child here, a spouse here or
3 something like that.

4 In contrast, the defendant has deep ties overseas, to
5 Mexico and historically to Argentina. Although this would be
6 controllable, he also has foreign passports.

7 And an additional and final dimension of the
8 government's argument as to why there would be a risk of
9 flight, which I credit, is the nature of the business in which
10 the defendant is alleged to have engaged. By its very nature,
11 as proffered, it is in the concealment business, it is in the
12 hiding business, it's in the pretend business involving back
13 and forth between the United States and Mexico.

14 Now, I realize that moving a person from U.S. to
15 Mexico is a lot harder than moving cyber currency;
16 nevertheless, the business echoes in a way the risk of flight
17 here, which is to say it involves some form of concealment and
18 transfer between the United States and Mexico. It is not
19 unreasonable, given the bad actors whom the business is alleged
20 to have attempted to facilitate with respect to money
21 laundering, that the defendant, through such people, has
22 connections who would be able to make the hard but not
23 impossible act of fleeing to Mexico without the lawful passport
24 easier in one way or the other.

25 So I find that the government has overwhelmingly

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1 advanced evidence that meets its burden here. The question is
2 then whether or not the defense's bail package here is
3 sufficient to reasonably assure the defendant's appearance.

4 Let me be really blunt here. I am skeptical that there is any
5 set of conditions that would reasonably assure the defendant's
6 risk of flight, essentially for all the reasons I've just
7 given. But the overall weight of the factors I've just set out
8 makes me considerably skeptical that any package here would do
9 the trick.

10 But I have no need to reach that ultimate issue here,
11 and particularly since it is not my case, I want to rule on as
12 limited grounds as possible. All I need to say here, without
13 regard to other hypothetical bail packages, is that I am
14 unpersuaded that this bail package, as proffered by the
15 defense, will reasonably assure the defendant's, Mr. Bomba's,
16 appearance.

17 And I say that with great appreciation, Mr. Del Valle,
18 as always for your advocacy, but particularly for the hard work
19 and vigor of your advocacy in presenting a bail package that in
20 many other cases might do the trick. You've done a lot of work
21 to identify signatories and cosigners, and you've given a lot
22 of forethought to it. I'm not surprised. You've been a very
23 vigorous and effective advocate before me in many cases before
24 and in this one too. You just have an unusually high degree of
25 difficulty here.

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In particular, just going through briefly the five people, it is helpful that Mr. Bomba's mother has taken out an apartment here. It answers a necessary question of where he would stay if he were released, but to be clear, the fact that his mother has an apartment here does not in any way, shape or form, make it more likely that he would stay here. It is a necessary part of the package just so that it answers that Court's question of whether he'd be on the street and unfindable.

But in the end, his mother's not being put up for security, and if he were to flee to Mexico, she'd be on the next plane behind him. There's absolutely nothing about her taking out an apartment here that would keep him here. She'd lose the security deposit. That's just not a big deal.

Two of the four cosigners have never met the defendant. That raises a fundamental question of whether he would care, or care a lot, if they took the hit of losing their security or even other unsecured assets towards the amount of the bond here. But even assuming, for argument's sake, that he did care about them and there was some degree of moral suasion -- and, again, I'm skeptical that there can be that much for people that one has never met -- if one's liberty for a decade perhaps is at stake, it's not clear that the financial hit that a stranger would take is going to hold them back that much, even if it causes some tensions within the broader social

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1 or familial group.

2 But in any event, even to the extent there is some
3 degree of moral suasion, the combined \$225,000 in equity in the
4 bank accounts seems to me would easily be made whole here,
5 based on the conversation I had with Mr. Swett, by the assumed
6 assets at the defendant's disposal. And I think whether or not
7 that would, in fact, happen, the defendant's ability to do that
8 would perhaps allay the concern some.

9 The more substantial question is presented by the
10 rabbi and his spouse and their willingness to put up the
11 approximately \$600,000 equity in the family home. That's
12 impressive. That speaks a lot about them and they have, in
13 fact, met the defendant more than any other part of the
14 proposed bail package that gave me a degree of pause. In the
15 end, though, it's just not enough. They are not family, and
16 the amount that they would stand to lose is apparently readily
17 compensable by the defendant's businesses revenue in the last
18 year alone. There is reason to infer that the defendant could
19 repay that \$600,000 with some degree of ease.

20 In the end, while it is certainly a piece of a bail
21 package, if one is viable, it's a good piece. I would urge you
22 to stick with that if you're going to continue to work this
23 angle, Mr. Del Valle. It simply doesn't get there or close.

24 And so with regret, because I am never happy to
25 approve the pretrial incarceration of a person who is presumed

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1 innocent, the government has met its burden, it has not been
2 rebutted, and I find that the proposed bail package is not
3 sufficient to reasonably assure the appearance of the
4 defendant. That is not a decision about other hypothetical
5 bail packages that might be presented. There will be time
6 enough for you to make an argument along those lines in front
7 of Judge Cote when she is back.

8 With that, is there anything further from the
9 government?

10 MR. SWETT: No. Thank you, your Honor.

11 THE COURT: Anything further from the defense?

12 MR. DEL VALLE: Nothing further. Thank you very much,
13 your Honor.

14 THE COURT: Thank you. Mr. Bomba, I wish you well,
15 and I just want to thank the members of the Bomba family and
16 friends who are here. I regret that the outcome was not what
17 you wanted, but your presence and your support for him were
18 duly noted. I am putting it on the record so that Judge Cote
19 is aware that you were here.

20 Thank you. We stand adjourned.

21 (Adjourned)